do, and we reach the conclusion that under the record there is no controversy but that the injury arose 'out of' and 'in the course' of the employment, if such there were."

Master and Servant—Existence of Relation—Servant on Premises of Master before Time for Going to Work.—In Flanigan *v.* Kansas City Southern Ry. Co., 208 S. W. 441, the Supreme Court of Missouri held that under the facts of the case the relation of master and servant did not exist as to a servant who, contrary to custom, was upon master's premises 15 or 20 minutes before time for going to work, during which time he was injured.

According to the statement of facts, plaintiff was a car repairer, and had at times worked for defendant in its repair yards at Kansas City. In those yards was a washhouse where workmen kept their tools and where there was a stove for their use when they desired to make a fire to warm. Nearby was the foreman's office, where, before going to work in the morning, the workmen applied for and received their cards for the day. There was also the sandhouse in which there was a stove for drying sand. With defendant's acquiescence the workmen sometimes used that place to get warm. Plaintiff testified that he was working for defendant until some time in February 1914, when he got his foot hurt, and did not work until on February 25 and 26. When he quit on the last-named day the foreman told him to come back when his foot got well. The wages for the last two days were not paid him until after his injury. One day after Feb. 26th he was in defendant's yards and borrowed a quarter from one of the men, but did not apply for work. The company provided cars and passes by which workmen, including plaintiff, were carried from near their homes to said yards, arriving at the yards a few minutes before or after 7, the hour for work. Plaintiff testified that he did not take that route that morning, but that he took a street car about 15 minutes after 5, and that, after leaving the street car, he had over a mile to walk to his work. Arriving at the yards 15 or 20 minutes before 7, he did not apply at the foreman's office for his work card, nor did he go to the washhouse where his tools were, but went to the sandhouse to warm. There was no one there. The night man in charge of the sandhouse usually left about 6 or half-past. Plaintiff entered the sandhouse and stood by the stove about two minutes when it fell against and on him, bruising and burning him. whereby he suffered severe injuries, practically losing the use of one arm and hand.

The court said: "This is a very unusual case. The English case, Sharp *v.* Johnson & Co. (2 K. B. 139), decided in 1905, comes nearer to it than any other we can find. In that case the workmen, in-

cluding the plaintiff therein, went daily by train from London to the country where they worked, arriving twenty minutes before the work began. Each was required to deposit a ticket at the office before time to begin work. It was a custom, known to the defendant, for the men to eat at a mess cabin on the premises before going to work. The plaintiff in that case, while on his way to deposit his ticket, fell into an excavation and was injured. It was there said:

"'This is not the case of a man hanging about his employers' premises during an unnecessarily long period before work commences. The applicant, with other workmen, had to come down from London by an early train, which brought them to the place of employment about twenty minutes before the time for actually beginning work. The employers seem to have been aware of this, and they had provided a mess cabin on the works at which the men employed could obtain refreshments, and which appears to have been open between 6:05 and 6:30 A. M. There was abundant evidence that, although it was the duty of the workmen to put their tickets in the slot at the ticket office within 3 minutes from 6:30 A. M., it was their common practice when they arrived by the early train from London to put their tickets on the ledge in front of the pigeonhole, in order that the timekeeper might take them thence on his arrival at the ticket-office at 6:30. There is no doubt that only a reasonable margin before the time of commencing actual work can be considered as coming within the period of employment, but it must, I think, cover an interval during which, as in this case, with the knowledge and consent of the employers, the workman was permitted to be upon the premises for the purpose of depositing his ticket and then proceeding to the mess cabin provided by them in order to procure refreshment.'

"In Milwaukee *v.* Althoff (156 Wis. 68, 145 N. W. 238) the court cited the English case above mentioned and said:

"'In the instant case, when the servant reported to his foreman and received his instructions for the day and proceeded to carry out these instructions by starting for the place where he was to work, we think the relation of master and servant commenced, and that in walking to the place of work the servant was performing a service growing out of and incidental to his employment.'

"There are several things which cannot be overlooked in this connection. Plaintiff was not regularly at work for defendant. He had not worked for more than a week. Defendant had not been notified that plaintiff would come to work on that day nor did it know that he was there. The last time that plaintiff was previously in the yards he was not there to work, but was apparently spending his time otherwise. When he came that morning, it was not by the usual means of travel furnished by defendant, nor did he get there

at the usual time, but earlier, fifteen or twenty minutes before time to go to work. He certainly was not an employee of defendant from February 26 to that day, and he had done nothing on March 6 to renew that relation except to come to the yards in the manner above stated.

"When a workman day after day presents himself at the same place and at the same time for work, it may be presumed that both parties contemplate that the relationship shall begin in the usual way and at the usual time on each day. But in this case, if plaintiff was the employee of defendant for that day, he became such by his own act of coming there as he did, and without the knowledge of defendant that he was there, and without any expectation of defendant that he would be there on that day. Defendant's other workmen took the cars furnished by defendant and arrived at the yards a few minutes before or after seven, the hour for work. It does not appear that there was, in such case, either time or necessity for a workman to resort to the sandhouse to warm before going to work. If defendant had known that plaintiff would get up at five, take a street car, then walk a mile, and get to the sandhouse fifteen or twenty minutes before seven, instead of leaving home at six and arriving on its cars at seven, it may have kept some one in charge of the sandhouse ready to look after his welfare.

"We are of the opinion that the relation of master and servant did not exist between defendant and plaintiff at the time of the injury, and that defendant owed plaintiff no duty with reference to such stove."